

IN THE IOWA DISTRICT COURT FOR SIOUX COUNTY

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
RESOURCES (99AG23542),

Plaintiff,

vs.

SIOUX PHARM, INC.,

Defendant

LAW NO. CV CV 022276

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (DNR) and for its claim against Defendant Sioux Pharm, Inc. (Sioux Pharm), states as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendant Sioux Pharm, Inc., for discharging pharmaceutical wastewater into surface and groundwater of the State of Iowa, repeatedly failing to maintain adequate freeboard at its storage lagoon, failing to properly land apply the wastewater, failing to comply with monitoring and reporting requirements for its wastewater lagoon, and illegally disposing of solid waste in its wastewater storage lagoon.

Parties

2. The State of Iowa is a sovereign state of the United States of America.

3. The Iowa Department of Natural Resources (DNR) is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.

4. Defendant Sioux Pharm, Inc., is an Iowa corporation with its principal place of business at 121 - 19th Street S.W., Sioux Center, Sioux County, Iowa. Dr. Allan Kramer is the President of Sioux Pharm, Inc., and its registered agent.

Jurisdiction

Wastewater Regulations

5. The DNR is the agency of the state responsible for the prevention, abatement, or control of water pollution. Iowa Code § 455B.172(1). The DNR maintains jurisdiction over and regulates the direct discharge of pollutants to a water of the state. Iowa Code § 455B.172(5).

6. The Iowa Environmental Protection Commission (EPC) has authority to establish water quality standards, pretreatment standards, and effluent standards; and to adopt rules relating to the location, construction, operation, and maintenance of disposal systems; permits for the operation, installation, construction, addition to, or modification of disposal systems, or for the discharge of any pollutant; and inspection, monitoring, record keeping, and reporting requirements for owners and operators of disposal systems. Iowa Code §§ 455A.6(6) and 455B.173(2), (3) and (6). The EPC's rules implementing these provisions are contained in 567 Iowa Admin. Code 60-69.

7. "Pollutant" means "sewage, industrial waste, or other waste." Iowa Code § 455B.171(18).

8. "Water of the state" means "any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are

contained within, flow through or border upon the state or any portion thereof.” Iowa Code § 455B.171(37).

9. The dumping, depositing, or discharging of pollutants into any water of the state is prohibited, except adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the DNR. Iowa Code § 455B.186(1).

10. Waters of the state shall be free from floating debris, oil, grease, scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance. 567 Iowa Admin. Code 61.3(2)“b”.

11. Waters of the state shall be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions. 567 Iowa Admin. Code 61.3(2)“c”.

12. Waters of the state shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic to animal life. 567 Iowa Admin. Code 61.3(2)“d”.

13. There shall be no disposal of a pollutant other than heat into wells within the State of Iowa. 567 Iowa Admin. Code 62.9.

14. A permittee shall maintain records of all information resulting from any monitoring activities required in its operation permit. 567 Iowa Admin. Code 63.2(1). Records of operation shall be submitted to the DNR within 15 days following the close of the applicable reporting period and in accordance with monitoring requirements incorporated in the operation permit. 567 Iowa Admin. Code 63.7. Records of operation shall include the results of all monitoring

specified in or authorized by 567 Iowa Admin. Code chapter 63 and incorporated in the operation permit. 567 Iowa Admin. Code 63.9.

15. Operation of any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the DNR is prohibited. 567 Iowa Admin. Code 64.3(1).

16. A person who violates any provision of Iowa Code chapter 455B, Division III, Part 1 or any permit, rule, standard, or order issued thereunder shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(1).

17. The Attorney General is authorized, at the request of the DNR director with approval of the EPC, to initiate any legal proceedings, including an action for an injunction or temporary injunction, necessary to enforce the penalty provisions of Iowa Code chapter 455B, Division III, Part 1, or to obtain compliance with the provisions of said statutes or any rules promulgated or any provision of any permit issued thereunder. Iowa Code § 455B.191(4).

Solid Waste Regulations

18. Under Iowa Code section 455B.304, the Environmental Protection Commission of the DNR is required to establish rules for the proper administration of Iowa Code chapter 455B, Division IV, Part 1, related to the treatment and disposition of solid waste. Pursuant thereto, the Commission has adopted 567 Iowa Admin. Code chapters 100-119 concerning solid waste management and disposal.

19. Iowa Code section 455B.307(1) and 567 Iowa Admin. Code 100.4 prohibit dumping or depositing or permitting dumping or depositing of solid waste at any place other than a facility permitted by the DNR, unless otherwise permitted by rule.

20. The Attorney General is authorized under Iowa Code section 455B.307(2), on request of the DNR, to institute any legal proceedings necessary in obtaining compliance with an order of the director or prosecuting any person for a violation of Iowa Code chapter 455B, Division IV, Part 1, or the rules issued under that part. Under Iowa Code section 455B.307(3), any person who violates any provision of Iowa Code chapter 455B, Division IV, Part 1, or any rule or any order adopted pursuant to that part is subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of violation.

Facts

21. Sioux Pharm operates a pharmaceutical plant in Sioux Center, Sioux County, Iowa. The wastewater produced at the plant is primarily a digested beef protein that is a byproduct from the production of chondroitin sulfate. The wastewater is stored in a single cell lagoon located in the NW ¼ of the NW ¼ of Section 30, Washington Township, Sioux County, Iowa. The lagoon has capacity for 860,000 gallons of wastewater. Approximately 12,000 gallons of wastewater per day is hauled by tanker truck from the plant to the lagoon. Wastewater is then land applied to surrounding crop fields.

22. On January 23, 2004, DNR officials visited the site of Sioux Pharm's wastewater storage lagoon, and observed that Sioux Pharm had commenced construction of the lagoon without first obtaining a construction permit from the DNR. On March 8, 2004, the DNR issued Administrative Order No. 2004-WW-13 to the defendant, a copy of which is attached hereto as

Exhibit A and by this reference incorporated herein. The Order found that Sioux Pharm had constructed a waste disposal system without a permit and assessed an administrative penalty of Five Thousand Dollars (\$5,000.00). The Order further directed Sioux Pharm to comply with a February 10, 2004 letter from the DNR, which required Sioux Pharm to submit engineering plans and specifications relating to construction of the lagoon to the department.

23. On April 27, 2004, the DNR issued an as-built permit for the wastewater storage lagoon, a copy of which is attached, marked as Exhibit B and incorporated by reference. The as-built permit states that the lagoon is designed for a maximum hydraulic loading of 100,000 gallons per month and that a construction permit must be obtained prior to making any additions or alterations to the lagoon. The as-built permit further required that wastewater shall be removed from the lagoon as required to maintain a minimum of two (2) feet of freeboard at all times.

24. On April 27, 2004, the DNR also issued Iowa Operation Permit No. 84-00-1-16 for the land application of waste from the wastewater lagoon, a copy of which is attached, marked as Exhibit C and incorporated by reference. The DNR renewed Operation Permit No. 84-00-1-16 on December 29, 2008. The renewed operation permit authorizes land application of wastewater from the lagoon on nine (9) areas within Sioux County, including an approximately 175 acre area in the N ½ of Section 30, Washington Township, Sioux County, Iowa. The permit provides that no waste discharge into waters of the State of Iowa shall be caused, allowed or permitted from the wastewater land application, and that wastewater shall not be applied within 300 feet of a continuous flowing stream or any physiographic feature that may provide direct connection to the groundwater. The permit requires that careful land application be practiced to assure there is

no ponding of applied wastewater. The operation permit further requires that operation monitoring reports be submitted to the DNR by the 15th day of the month following the month being reported.

25. On September 22, 2006, DNR officials received a complaint that the wastewater storage lagoon operated by Sioux Pharm was close to overflowing. DNR officials inspected the wastewater lagoon on September 29, 2006. DNR officials observed the liquid level in the lagoon was within 1 foot of overtopping the berm. Wastewater had also leaked from a tanker truck and flowed into a nearby ditch. On October 2, 2006, DNR officials issued a Notice of Violation to Sioux Pharm, citing the violation of the requirement that freeboard be maintained at two (2) feet in the lagoon.

26. DNR officials inspected Sioux Pharm's wastewater storage lagoon on July 9, 2007. The berms of the lagoon had erosion and lacked vegetative cover. DNR officials observed pop bottles and other trash in the lagoon. DNR officials also reviewed the facility's monthly operating reports and found that the reports did not include the results of all monitoring required by the operation permit.

27. On August 23 and 24, 2007, DNR officials received complaints alleging that Sioux Pharm's wastewater storage lagoon was close to overflowing. DNR officials investigated the complaints on August 30, 2007. DNR officials noted that only 6-12 inches of freeboard remained in the lagoon. DNR officials also observed several plastic bottles and other debris in the lagoon. A puddle of wastewater was observed in the driveway to the facility.

28. On September 19, 2007, a complainant notified DNR officials that milky water had been seen in an unnamed tributary to Six Mile Creek, just south of the intersection of 470th Street

and Chestnut Avenue in Sioux County. The complainant stated that the source of the milky water was wastewater from Sioux Pharm. DNR officials contacted Sioux Pharm's President, Dr. Allan Kramer. Kramer stated that on September 17th, a truck hauling soap solution and wastewater from the Sioux Pharm lagoon had stopped at a farmstead located at the corner of 470th Street and Chestnut Avenue, and became stuck in the mud about 700 feet from the unnamed tributary. The driver then discharged 4,000 to 6,000 gallons of wastewater on the ground. Kramer stated that rainfall may have washed wastewater into the creek.

29. After speaking with Kramer, DNR officials visited the site where milky water had been observed in the unnamed tributary. The creek runs through a culvert under Chestnut Avenue. DNR officials observed a whitish colored, oily substance on the surface of the unnamed tributary and suspended solids in the creek itself. Samples of the stream showed high levels of HEM (oil and grease), ammonia and BOD. No fish alive or dead were observed in the stream. According to local residents interviewed by DNR officials, the creek had been "white as milk" a few hours earlier. DNR officials then left the site to inspect Sioux Pharm's lagoon. The lagoon was close to overflowing with less than one foot of freeboard remaining. The wastewater was dark brown and foamy. Numerous plastic bottles and other debris were also observed in the lagoon. Returning to the farmstead, DNR officials observed a large patch of dead grass on the south side of the driveway and the ground was saturated with wastewater. A well house was located within the patch of dead grass and wastewater was observed pooled around the structure. Wastewater ran from the patch of dead grass to a nearby cornfield and grove of trees. The wastewater was dark brown, foamy and had a strong odor. DNR officials noted a tile outlet a

few hundred feet upstream of the culvert at which milky water had been observed. A pool of wastewater was observed at the tile outlet with yellow, floating scum matting the grass.

30. On September 20, 2007, DNR officials returned to the farmstead where wastewater had been observed. DNR officials followed the flow of wastewater through the cornfield on the property. Several puddles of wastewater were observed. Several puddles of wastewater were also observed in the grove of trees. DNR officials then opened the well house at the site and noticed an open well at the bottom of the structure. Wastewater had flowed into the well. DNR officials then visited Sioux Pharm's wastewater storage lagoon and noted only 1 or 2 inches of freeboard remaining.

31. On September 24, 2007, DNR officials returned to the farmstead and learned from a local resident that Sioux Pharm had recently land applied wastewater from its lagoon to a hayfield in the West ½ of Section 20, Washington Township, in Sioux County. The hayfield was not an approved area for land application of wastewater from this facility. DNR officials then drove to the hayfield and observed pooled wastewater. DNR officials inspected Sioux Pharm's wastewater treatment lagoon. Wastewater was being unloaded during the inspection. The tanker truck unloading the wastewater was unattended. The hose used to unload the wastewater was cracked and wastewater was dribbling on the ground.

32. On October 26, 2007, DNR officials received a complaint that Sioux Pharm had dumped wastewater from its lagoon on a terrace in a field in the NE ¼ of Section 32 and the NW ¼ of Section 33, Washington Township, Sioux County. DNR officials inspected the field and observed foamy puddles of wastewater. The field was not an approved land application area for wastewater from the Sioux Pharm facility.

33. On February 22, 2008, DNR officials observed Sioux Pharm's wastewater storage lagoon. Wastewater had exceeded the minimum freeboard and was overtopping the berm. Wastewater had overflowed from the lagoon and could be seen on the snow cover near the lagoon.

34. On August 13, 2008, DNR officials again inspected Sioux Pharm's lagoon. Freeboard was less than two (2) feet. Pop cans and bottles were again observed in the lagoon. A puddle of wastewater was observed in the driveway to the facility.

35. On November 6, 2008, DNR officials inspected Sioux Pharm's facility to review its wastewater records. Sioux Pharm could only produce copies of lab results for August, September and October, 2008.

36. On November 19, 2008, DNR officials received a complaint that wastewater from Sioux Pharm was being surface applied too close to a creek. On November 20, 2008, DNR officials inspected the field in Section 30 of Washington Township where the wastewater had been land applied. Land application of wastewater was ongoing at the time of the inspection. DNR officials observed that wastewater had been applied within 300 feet of a stream at two (2) separate locations within the field. DNR officials also noted areas where wastewater had ponded, including a portion of the southern slope of the storage basin. On December 15, 2008, DNR officials issued a Notice of Violation to Sioux Pharm, citing the failure to maintain wastewater records, and the improper land application of wastewater.

Violations

Wastewater Violations

37. On and before July 9, 2007, Sioux Pharm failed to submit all the required data in its monthly operation report in violation of Operation Permit No. 84-00-1-16 and 567 Iowa Admin. Code 63.2(1) and 64.3(1).

38. On and before August 30, 2007, Sioux Pharm discharged wastewater from its wastewater storage lagoon to an area not approved for land application in violation of Operation Permit No. 84-00-1-16 and 567 Iowa Admin. Code 64.3(1).

39. On and before September 19, 2007, Sioux Pharm discharged wastewater into surface water of the State of Iowa in violation of Iowa Code section 455B.186(1) and Iowa Operation Permit No. 84-00-1-16.

40. On and before September 19, 2007, Sioux Pharm discharged wastewater into groundwater of the state in violation of Iowa Code section 455B.186(1) and Iowa Operation Permit No. 84-00-1-16.

41. On and before September 19, 2007, Sioux Pharm discharged wastewater into a well within the State of Iowa in violation of 567 Iowa Admin. Code 62.9.

42. On and before September 19, 2007, Sioux Pharm discharged wastewater into a water of the state in amounts sufficient to create a nuisance in violation of 567 Iowa Admin. Code 61.3(2)"b".

43. On and before September 19, 2007, Sioux Pharm discharged wastewater into a water of the state producing objectionable color, odor or other aesthetically objectionable conditions in violation of 567 Iowa Admin. Code 61.3(2)"c".

44. On and before September 19, 2007, Sioux Pharm discharged wastewater into a water of the state in concentrations or combinations acutely toxic to animal life in violation of 567 Iowa Admin. Code 61.3(2)“d”.

45. On and before September 24, 2007, Sioux Pharm discharged wastewater from its wastewater storage lagoon to an area not approved for land application in violation of Operation Permit No. 84-00-1-16 and 567 Iowa Admin. Code 64.3(1).

46. On and before September 24, 2007, Sioux Pharm land applied wastewater from its wastewater storage lagoon to an area not approved for land application in violation of Operation Permit No. 84-00-1-16 and 567 Iowa Admin. Code 64.3(1).

47. On and before October 26, 2007, Sioux Pharm land applied wastewater from its wastewater storage lagoon to an area not approved for land application in violation of Operation Permit No. 84-00-1-16 and 567 Iowa Admin. Code 64.3(1).

48. On and before February 22, 2008, Sioux Pharm discharged wastewater from its wastewater storage lagoon to an area not approved for land application in violation of Operation Permit No. 84-00-1-16 and 567 Iowa Admin. Code 64.3(1).

49. On and before November 6, 2008, Sioux Pharm failed to maintain records of all information resulting from monitoring activities in violation of 567 Iowa Admin. Code 63.2(1).

50. On and before November 20, 2008, Sioux Pharm land applied wastewater within 300 feet of a continuous flowing stream or physiographic feature that may provide direct connection to the groundwater in violation of Operation Permit No. 84-00-1-16 and 567 Iowa Admin. Code 64.3(1).

51. On and before November 20, 2008, Sioux Pharm allowed wastewater to pond during land application in violation of Operation Permit No. 84-00-1-16 and 567 Iowa Admin. Code 64.3(1).

Freeboard Violations

52. On and before August 30, 2007, Sioux Pharm failed to maintain a two foot freeboard in its wastewater storage lagoon in violation of the as-built permit for its wastewater storage lagoon and 567 Iowa Admin. Code 64.3(1).

53. On and before September 19, 2007, Sioux Pharm failed to maintain a two foot freeboard in its wastewater storage lagoon in violation of the as-built permit for its wastewater storage lagoon and 567 Iowa Admin. Code 64.3(1).

54. On and before September 20, 2007, Sioux Pharm failed to maintain a two foot freeboard in its wastewater storage lagoon in violation of the as-built permit for its wastewater storage lagoon and 567 Iowa Admin. Code 64.3(1).

55. On and before February 22, 2008, Sioux Pharm failed to maintain a two foot freeboard in its wastewater storage lagoon in violation of the as-built permit for its wastewater storage lagoon and 567 Iowa Admin. Code 64.3(1).

56. On and before August 13, 2008, Sioux Pharm failed to maintain a two foot freeboard in its wastewater storage lagoon in violation of the as-built permit for its wastewater storage lagoon and 567 Iowa Admin. Code 64.3(1).

Solid Waste Violations

57. On and before July 9, 2007, Sioux Pharm dumped or permitted the dumping of solid waste into its wastewater storage lagoon in violation of Iowa Code section 455B.307(2) and 567 Iowa Admin. Code 100.4.

58. On and before August 30, 2007, Sioux Pharm dumped or permitted the dumping of solid waste into its wastewater storage lagoon in violation of Iowa Code section 455B.307(2) and 567 Iowa Admin. Code 100.4.

59. On and before September 19, 2007, Sioux Pharm dumped or permitted the dumping of solid waste into its wastewater storage lagoon in violation of Iowa Code section 455B.307(2) and 567 Iowa Admin. Code 100.4.

60. On and before August 13, 2008, Sioux Pharm dumped or permitted the dumping of solid waste into its wastewater storage lagoon in violation of Iowa Code section 455B.307(2) and 567 Iowa Admin. Code 100.4.

Prayer for Relief

WHEREFORE, State of Iowa ex rel., Iowa Department of Natural Resources requests that the Court:

- a. assess a civil penalty against Defendant Sioux Pharm, Inc., pursuant to Iowa Code section 455B.191(1) for each day of violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 61.3(2)“b”, 61.3(2)“c”, 61.3(2)“d”, 62.9, 63.2(1), 64.3(1); the as-built permit for defendant’s wastewater storage lagoon, and Operation Permit No. 84-00-1-16;
- b. assess a civil penalty against Defendant Sioux Pharm, Inc., pursuant to Iowa Code section 455B.307(3) for each day of violation of Iowa Code section 455B.307(2), and 567 Iowa Admin. Code 100.4;

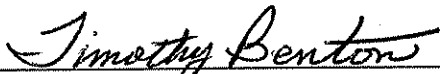
- c. issue a permanent injunction pursuant to Iowa Code section 455B.191(4) enjoining Defendant Sioux Pharm, Inc., from any violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 61.3(2)"b", 61.3(2)"c", 61.3(2)"d", 62.9, 63.2(1), 64.3(1); the as-built permit for defendant's wastewater storage lagoon, and Operation Permit No. 84-00-1-16; and
- d. issue a permanent injunction pursuant to Iowa Code section 455B.307(2) enjoining Defendant Sioux Pharm, Inc., from any violation of Iowa Code section 455B.307(2) and 567 Iowa Admin. Code 100.4.

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

DAVID R. SHERIDAN
Assistant Attorney General


TIMOTHY D. BENTON, AT0000843
Assistant Attorney General
Environmental Law Division
Lucas State Office Building
321 E. 12th Street, Ground Floor
Des Moines, Iowa 50319
Phone: (515) 281-5351
Fax: (515) 242-6072
E-mail: tbenton@ag.state.ia.us
ATTORNEYS FOR PLAINTIFF

Raju Kakarlapudi
U.S. EPA

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

RECEIVED

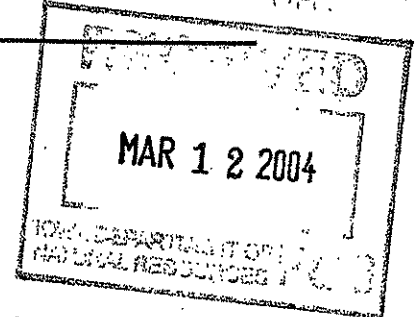
MAR 25 2004

IN THE MATTER OF:

SIOUX PHARM, INC.
Wastewater Facility No. 6-84-00-1-16

ADMINISTRATIVE ORDER
NO. 2004-WW-13

TO: Sioux Pharm, Inc.
Allan Kramer, President
121 19th Street, SW
Sioux Center, IA 51250



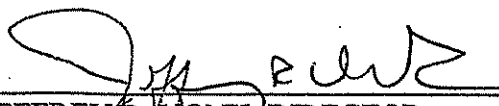
VIOLATION: Iowa Code section 455B.183 and 567 IAC 64.2(1). You constructed a waste disposal system without a permit.

ORDER: You shall cease violation in the future and comply with the department's February 10, 2004, letter. In addition, a penalty of \$5,000.00 is assessed effective 30 days from your receipt of this Order, and shall be paid to the department at the address below, within 60 days of receipt of this order, unless you appeal as provided below. \$2,000.00 of this amount is based on economic benefit, due to the ability to operate production facilities through the use of unpermitted waste disposal facilities. \$1,000.00 of this amount is based on the gravity of the violation – construction of waste disposal facilities without the required permit threatens the integrity of the water pollution control program. \$2,000.00 of this amount is for culpability – you were informed of the requirements and failed to comply.

AUTHORITY: Iowa Code § 455B.109, 455B.175(1); 567 IAC 10.3.

APPEAL: Iowa Code § 455B.109; 561 IAC 7.5(1). A written Notice of Appeal may be filed with the Director within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC 7. You may contact Michael Murphy at (515) 281-8973 for more information regarding appeal procedures and resolution of this Order.

NONCOMPLIANCE: If you fail to comply with this Order you may be subject to further penalties pursuant to Iowa Code section 455B.109 or penalties and injunction pursuant to Iowa Code §§ 455B.191.


JEFFREY R. VONK, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES
502 East 9th Street, Des Moines, IA 50319

Dated this 8 day of

March, 2004

EXHIBIT A



RECORD COPY
File Name 6-84-00-1-16
Senders Initials RJP

STATE OF IOWA

THOMAS J. VILSACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
JEFFREY R. VONK, DIRECTOR

April 27, 2004

Dr. Allan Kramer
121 - 19th Street SW
Sioux Center, Iowa 51250

Re: Wastewater Storage Lagoon
As-Built Approval
Dr. Allan Kramer
Sioux Center, Iowa

Dear Mr. Kramer:

We have reviewed the as-built design information for your wastewater storage lagoon and find it to be approvable. Because the lagoon was constructed without prior approval, a construction permit will not be issued. Instead, this letter hereby authorizes you to use your wastewater storage lagoon located in the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 30, T94N, R47W, Washington Township, Sioux County, Iowa.

This authorization to use you lagoon is issued subject to the following conditions:

1. The lagoon is designed for a maximum hydraulic loading rate of 100,000 gallons per month. A construction permit shall be obtained prior to making any additions or alterations to the lagoon, making any process changes that would materially effect the lagoon or increasing wastewater loading to the lagoon in excess of the design loading stated above. Application for a construction permit shall be submitted ninety days before construction is scheduled to start.
2. Wastewater shall be removed from the lagoon as required to maintain a minimum of two feet of freeboard at all times. Freeboard shall be defined as the difference in elevation between the liquid level and the top of the pond embankments, measured at the lowest point of the embankments.
3. No sanitary wastes shall be discharged into the lagoon.
4. This permit covers the waste storage lagoon only. No land application of wastewater is authorized by issuance of this permit.
5. If this department determines that the wastewater storage lagoon becomes a source of objectionable odors, aeration equipment of sufficient capacity to eliminate the objectionable conditions shall be installed.
6. A minimum liquid depth of two feet of either dilute waste or fresh water, as necessary, shall be maintained in the lagoon to protect the integrity of the soil liner/seal.

7. If it is determined at the monitoring well that the water table rises above two (2) feet below the bottom of the basin, a drain tile system shall be installed at an elevation of 1294' or lower around the entire basin.

This authorization letter should be retained in your files and copies should be provided to personnel responsible for operation of the wastewater storage lagoon.

Please be advised that it is a violation of this department's rules to initiate construction of any modification or addition to your wastewater storage lagoon without prior approval from this department. Violations of department rules may result in enforcement actions.

Please feel free to contact Douglas Opheim, P.E. at (712) 262-4177, if you have any questions.

Sincerely,

ENVIRONMENTAL SERVICES DIVISION



for WAYNE FARRAND, SUPERVISOR
WASTEWATER SECTION

c: Jacobson-Westergard & Associates, Inc., Paul R. Pettiti, P.E., 105 South 6th Street, Estherville, IA 51334.
DNR Field Office 3

IOWA DEPARTMENT OF NATURAL RESOURCES
OPERATION PERMIT FOR A LAND APPLICATION SYSTEM

Permittee:

Allan Kramer
121 - 19th Street SW
Sioux Center, Iowa 51250

Identity and Location of Facility:

Allan Kramer Wastewater Lagoon
NW ¼ of the NW ¼ of Sec 30, Washington Twp.
T94N, R47W, Sioux County, Iowa

Iowa Operation Permit Number: 84-00-1-16

Date of Issuance: April 27, 2004

Date of Expiration: April 1, 2009

You are required to file for renewal of this permit
by: October 1, 2008

LAND APPLICATION SYSTEM:

No waste discharge into waters of the State of Iowa shall be caused, allowed or permitted from the wastewater land application operation. No sanitary wastes are allowed or permitted to be stored in the lagoon.

This permit is issued pursuant to the authority of section 402(b) of the Clean Water Act (33 U.S.C 1342(b)), Iowa Code section 455B.174 and rule 567--64.3, Iowa Administrative Code. You are authorized to operate the disposal system in accordance with the terms set forth in this permit.

DESCRIPTION

The permittee is authorized to land apply wastewater from a protein, corn, and rice processing operation using mobile application vehicles. No sanitary wastes are allowed or permitted to be stored in the lagoon or land applied as part of this permit. No discharge of process waste to surface water is permitted.

Any existing, unexpired Iowa operation permit or Iowa NPDES permit previously issued by the department for the facility identified above is revoked by the issuance of this permit unless the facility is being upgraded or replaced by a new facility; then the existing permit will remain in effect until the new facility is completed and in operation.

You may appeal any condition of this permit by filing a written notice of appeal and request for administrative hearing with the director of this department within 30 days of your receipt of this permit. Contact the Iowa Department of Natural Resources for extra report forms, details on performing monitoring or any additional information at Gateway North Mall, 1900 Grand Avenue, Spencer, Iowa 51301, or phone 712/262-4177.

For the Department of Natural Resources:

Jeffrey R. Vonk, Director

By: 
for Wayne Farrand, Supervisor
Wastewater Section
ENVIRONMENTAL PROTECTION DIVISION

Distribution: 1 - Permittee; 1 - Wastewater Section; 1 - Field Office 4; 1 - Records Center

EXHIBIT C

**OPERATING REQUIREMENTS FOR THE LAND APPLICATION OPERATION FOR
DISPOSAL OF PROCESS WASTEWATER**

The permittee is authorized to operate said disposal system in accordance with the conditions set forth below:

1. The permittee shall report to this department any discharge of waste into a watercourse from the land disposal operations. Such notification shall be given by telephone call to our Spencer office (712/262-4177) within twenty-four (24) hours of the discharge occurrence. In addition, the permittee shall provide the following information, in writing, within five (5) days of such discharge.
 - a) A description of the cause of discharge;
 - b) The period of discharge, including the exact dates and times of discharge. If the discharge has not ceased, notification shall include the anticipated duration of the discharge and the steps being taken to reduce, eliminate, and prevent recurrence of the discharge.
2. The permittee may land apply up to two inches per year (or 50,000 gallons per acre per year) of wastewater onto an approximately 175 acre area in the N ½ of Section 30, Washington Township, T94N, R47W, Sioux County, Iowa. A more specific designation of the above area on an aerial photo is included as an appendix to this permit.
3. The total annual application of nitrogen from all sources (including any application of commercial fertilizer or animal wastes) shall not exceed the crop uptake rate.
4. Wastewater shall not be surface applied in excess of 0.4 inch (or 10,000 gallons per acre) per application.
5. Wastewater may be directly injected at rates not to exceed 0.75 inch (or 20,000 gallons per acre) per application.
6. Wastewater application shall not exceed 0.75 inch (or 20,000 gallons per acre) per two weeks.
7. Wastewater shall not be applied within 300 feet of dwellings or public use areas (not including public roads).
8. Wastewater shall not be surface applied within 50 feet of the property lines of the application field.
9. Wastewater may be applied to within 5 feet of the property lines of the application field, if it is directly injected.
10. Wastewater shall not be applied within 400 feet of potable water supply wells not located on the application field.
11. Wastewater shall not be surface applied within 200 feet of potable water supply wells located on the application field.
12. Wastewater may be applied to within 50 feet of potable water supply wells located on the application field, if it is directly injected.

13. Wastewater shall not be applied within 300 feet of a continuous flowing stream or any physiographic feature that may provide direct connection to the groundwater.
14. Wastewater shall not be applied within 1000 feet of a shallow public well.
15. Wastewater shall not be applied within 500 feet of a public lake or impoundment.
16. Wastewater shall not be applied within a half mile of a public lake or impoundment used as a source of water by a potable water supply.
17. The permittee may land apply wastewater during periods of ground frost only on soils with slope of five (5) percent or less.
18. Wastewater application during periods of ground frost shall not exceed a total of 0.2 inches (or 5,000 gallons per acre) over each cold weather season (fall through spring).
19. Two groundwater monitoring wells area (one upstream and one downstream with respect to the direction of groundwater flow) shall be installed adjacent to the application area.
20. General Operating Conditions:
 - a) Careful land application shall be practiced to assure that there is no ponding of the applied wastewater.
 - b) Wastewater shall not be applied to flooded areas until the ground has sufficient time to dry.
 - c) Application of wastewater will not be allowed during rainfalls.
 - d) Wastewater application shall be stopped if runoff occurs.
 - e) The grass and/or crops on the application areas shall be harvested and removed so the nutrient requirement is not exceeded.
 - f) No sanitary wastes may be stored in the lagoon referenced by this permit or land applied on the areas designated by this permit.

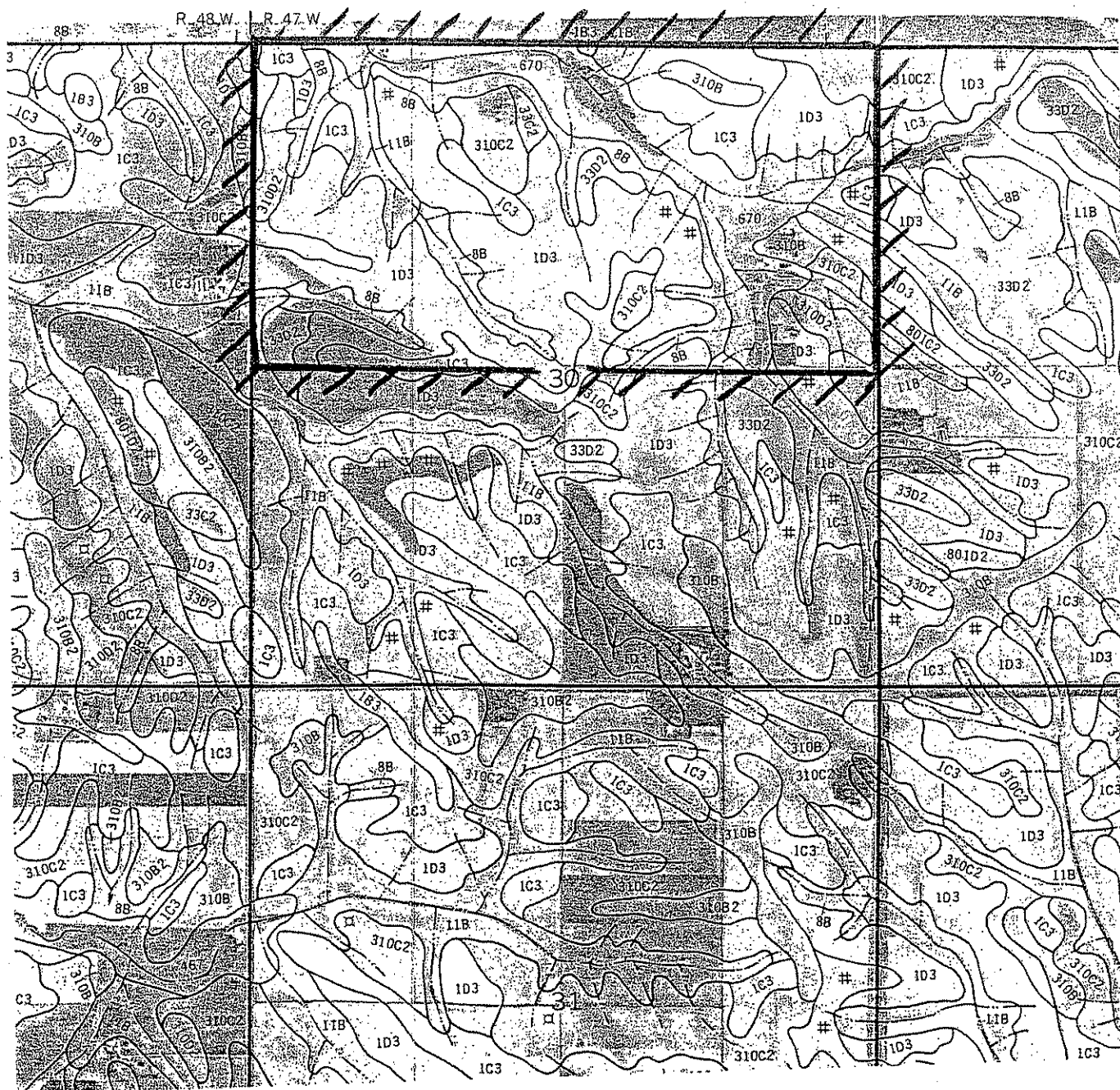
**MONITORING AND REPORTING REQUIREMENTS FOR THE LAND APPLICATION
SYSTEM FOR DISPOSAL OF PROCESS WASTEWATER**

Operation monitoring reports shall be submitted to the department's Spencer office (Gateway North Mall, 1900 Grand Avenue, Spencer, Iowa 51301) by the 15th day of the month following the month being reported.

WASTEWATER PARAMETER	FREQUENCY	SAMPLE TYPE	SAMPLING LOCATION
Flow	Daily	24-Hour Total	Raw Wastewater Pumped to the Storage Lagoon
Flow	Daily	24-Hour Total	Wastewater to Each Application Area
Cell Depth	2/Week	Measurement	Lagoon Cell
BOD5	1/3 Months	Grab	Wastewater from the Storage Lagoon Prior to Land Application
Total Nitrogen*	1/Month	Grab	Wastewater from the Storage Lagoon Prior to Land Application
Total Phosphorus	1/3 months	Grab	Wastewater from the Storage Lagoon Prior to Land Application
Total Nitrogen Applied*	Daily	Year to Date Total	Pounds Per Acre Applied To Each Application Area Shall Be Reported
Nitrate Nitrogen *	1/3 Months	Grab	Upstream and Downstream Groundwater Monitoring Wells
Dissolved Solids *	1/3 Months	Grab	Upstream and Downstream Groundwater Monitoring Wells

*Total Nitrogen refers to Total Kjeldahl Nitrogen plus Nitrate Nitrogen plus Nitrite Nitrogen.

Approved Land Application Area



N 1/2, Section 30, Washington Township, T94N, R47W, Sioux County

1. DEFINITIONS

- (a) 7 day average means the sum of the total daily discharges by mass, volume or concentration during a 7 consecutive day period, divided by the total number of days during the period that measurements were made. Four 7 consecutive day periods shall be used each month to calculate the 7-day average. The first 7-day period shall begin with the first day of the month.
- (b) 30 day average means the sum of the total daily discharges by mass, volume or concentration during a calendar month, divided by the total number of days during the month that measurements were made.
- (c) daily maximum means the total discharge by mass, volume or concentration during a twenty-four hour period.

2. DUTY TO COMPLY

You must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Issuance of this permit does not relieve you of the responsibility to comply with all local, state and federal laws, ordinances, regulations or other legal requirements applying to the operation of your facility.

{See 40 CFR 122.41(a) and 567-64.7(4)(e) IAC}

3. DUTY TO REAPPLY

If you wish to continue to discharge after the expiration date of this permit you must file an application for reissuance at least 180 days prior to the expiration date of this permit.

{See 567-64.8(1) IAC}

4. NEED TO HALT OR REDUCE ACTIVITY

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

{See 40 CFR 122.41(c) and 567-64.7(5)(f) IAC}

5. DUTY TO MITIGATE

You shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

{See 40 CFR 122.41(d) and 567-64.7(5)(i) IAC}

6. PROPERTY RIGHTS

This permit does not convey any property rights of any sort or any exclusive privileges.

7. TRANSFER OF TITLE

If title to your facility, or any part of it, is transferred the new owner shall be subject to this permit.

{See 567-64.14 IAC}

You are required to notify the new owner of the requirements of this permit in writing prior to any transfer of title. The Director shall be notified in writing within 30 days of the transfer

8. PROPER OPERATION AND MAINTENANCE

All facilities and control systems shall be operated as efficiently as possible and maintained in good working order. A sufficient number of staff, adequately trained and knowledgeable in the operation of your facility shall be retained at all times and adequate laboratory controls and appropriate quality assurance procedures shall be provided to maintain compliance with the conditions of this permit.

{See 40 CFR 122.41(e) and 567-64.7(5)(f) IAC}

9. DUTY TO PROVIDE INFORMATION

You must furnish to the Director, within a reasonable time, any information the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. You must also furnish to the Director, upon request, copies of any records required to be kept by this permit.

10. MAINTENANCE OF RECORDS

You are required to maintain records of your operation in accordance with 567-63.2 IAC.

11. PERMIT MODIFICATION, SUSPENSION OR REVOCATION

(a) This permit may be modified, suspended, or revoked and reissued for cause including but not limited to those specified in 567-64.3(11) IAC.

(b) This permit may be modified due to conditions or information on which this permit is based, including any new standard the department may adopt that would change the required effluent limits.

{See 567-64.3(11) IAC}

(c) If a toxic pollutant is present in your discharge and more stringent standards for toxic pollutants are established under Section 307(a) of the Clean Water Act, this permit will be modified in accordance with the new standards.

{See 40 CFR 122.62(a)(6) and 567-64.7(5)(g) IAC}

The filing of a request for a permit modification, revocation or suspension, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

12. SEVERABILITY

The provisions of this permit are severable and if any provision or application of any provision to any circumstance is found to be invalid by this department or a court of law, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected by such finding.

13. INSPECTION OF PREMISES, RECORDS, EQUIPMENT, METHODS AND DISCHARGES

You are required to permit authorized personnel to:

- (a) Enter upon the premises where a regulated facility or activity is located or conducted or where records are kept under conditions of this permit.
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit.
- (c) Inspect, at reasonable times, any facilities, equipment, practices or operations regulated or required under this permit.
- (d) Sample or monitor, at reasonable times, for the purpose of assuring compliance or as otherwise authorized by the Clean Water Act.

14. TWENTY-FOUR HOUR REPORTING

You shall report any noncompliance that may endanger human health or the environment. Information shall be provided orally within 24 hours from the time you become aware of the circumstances. A written submission that includes a description of noncompliance and its cause; the period of noncompliance including exact dates and times, whether the noncompliance has been corrected or the anticipated time it is expected to continue; and the steps taken or planned to reduce, eliminate, and prevent a reoccurrence of the noncompliance must be provided within 5 days of the occurrence. The following instances of noncompliance must be reported within 24 hours of occurrence:

- (a) Any unanticipated bypass which exceeds any effluent limitation in the permit.
{See 40 CFR 122.41(l)(5)(ii)(A)}
- (b) Any upset which exceeds any effluent limitation in the permit.
{See 40 CFR 122.41(l)(5)(ii)(B)}
- (c) Any violation of a maximum daily discharge limit for any of the pollutants listed by the Director in the permit to be reported within 24 hours.
{See 40 CFR 122.41(l)(5)(ii)(C)}

15. OTHER NONCOMPLIANCE

You shall report all instances of noncompliance not reported under Condition #14 at the time monitoring reports are submitted.

16. ADMINISTRATIVE RULES

Rules of this Department which govern the operation of your facility in connection with this permit are published in Part 567 of the Iowa Administrative Code (IAC) in Chapters 60-64 and 120-122. Reference to the term "rule" in this permit means the designated provision of Part 567 of the Iowa Administrative Code.

17. NOTICE OF CHANGED CONDITIONS

You are required to report any changes in existing conditions or information on which this permit is based:

- (a) Facility expansions, production increases or process modifications which may result in new or increased discharges of pollutants must be reported to the Director in advance. If such discharges will exceed effluent limitations, your report must include an application for a new permit.
{See 567-64.7(5)(a) IAC}

- (b) If any modification of, addition to, or construction of a disposal system is to be made, you must first obtain a written permit from this Department.
{See 567-64.2 IAC}

- (c) If your facility is a publicly owned treatment works or otherwise may accept waste for treatment from industrial contributors see 567-64.3(5) IAC for further notice requirements.

- (d) You shall notify the Director as soon as you know or have reason to believe that any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in this permit.
{See 40 CFR 122.42(a)}

You must also notify the Director if you have begun or will begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application

18. OTHER INFORMATION

Where you become aware that you failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report, you must promptly submit such facts or information.

19. UPSET PROVISION

(a) Definition - "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an upset. An upset constitutes an affirmative defense in an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph "c" of this condition are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(c) Conditions necessary for demonstration of an upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that;

- (1) An upset occurred and that the permittee can identify the cause(s) of the upset.
- (2) The permitted facility was at the time being properly operated; and
- (3) The permittee submitted notice of the upset to the Department in accordance with 40 CFR 122.41(l)(6)(ii)(B).
- (4) The permittee complied with any remedial measures required by Item #5 of the Standard Conditions of this permit.

(d) Burden of Proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

20. FAILURE TO SUBMIT FEES

This permit may be revoked, in whole or in part, if the appropriate permit fees are not submitted within thirty (30) days of the date of notification that such fees are due.

21. BYPASSES

(a) Definition - Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

(b) Prohibition of bypass. Bypass is prohibited and the department may take enforcement action against a permittee for bypass unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance;

(3) The permittee submitted notices as required by paragraph "d" of this section.

(c) The Director may approve an anticipated bypass after considering its adverse effects if the Director determines that it will meet the three conditions listed above.

(d) Reporting bypasses. Bypasses shall be reported in accordance with 567-63.6 IAC.

22. SIGNATORY REQUIREMENTS

Applications, reports or other information submitted to the Department in connection with this permit must be signed and certified as required by 567-64.3(8) IAC.

23. USE OF CERTIFIED LABORATORIES

Effective October 1, 1996, analyses of wastewater, groundwater or sewage sludge that are required to be submitted to the department as a result of this permit must be performed by a laboratory certified by the State of Iowa. Routine, on-site monitoring for pH, temperature, dissolved oxygen, total residual chlorine and other pollutants that must be analyzed immediately upon sample collection, settleable solids, physical measurements, and operational monitoring tests specified in 567-63.3(4) are excluded from this requirement.